



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

April 13, 2016

To the Gowanus Canal Community Advisory Group:

Thank you for your communication dated March 30, 2016. Regional Administrator Judith Enck has asked me to respond. You write that the Community Advisory Group (CAG) believes that "pending EPA decisions may effectively change the Record of Decision" (ROD) for the Gowanus Canal, and that this "potential deviation warrants that an official Public Comment Period be established."

We understand your reference to pending decisions to be EPA's forthcoming decision regarding the siting of the larger of the two combined sewer overflow (CSO) retention tanks. While I do not agree with the reason stated by the CAG for, in response to your request EPA will provide a 30-day public comment period as described further below.

The Gowanus Canal ROD, issued in September, 2013, called for the siting and construction of two CSO retention tanks, one to control discharges from the RH-034 CSO and the other to control discharges from the OH-007 CSO. For costing and related purposes the ROD assumed locations for the two tanks. Those assumed locations were not, however, requirements of the ROD. The ROD specifically stated that "the location of the retention tanks will be determined during the remedial design." Accordingly, in 2014, EPA issued the City of New York a unilateral administrative order (UAO) requiring, among other things, that the City evaluate and select sites for the two CSO retention tanks as part of the design process.

In June, 2015 New York City submitted its draft tank siting report. For the smaller OH-007 CSO retention tank, the City preferred a site it designated as OH-4. This is the same location as was assumed in the EPA ROD.

For the larger 8 million gallon RH-034 CSO retention tank, the City preferred a site it designated as RH-3, referred to as the "Head-of-Canal" or "Canal-side" location. The RH-3 site occupies two privately owned parcels, designated as Parcels VI and VII in the New York State Department of Environmental Conservation (NYSDEC) ROD for the Fulton Municipal Former Manufactured Gas Plant (MGP) state Superfund site (Fulton MGP Site). EPA's Gowanus Canal ROD assumed a different location -- a site the City designated as RH-4, located on New York City's Thomas Greene Park (which is also designated as Parcel II in NYSDEC's Fulton MGP Site ROD). This is referred to as the "Park" site. EPA's ROD identified the Park site as "a potentially suitable" location due to synergies associated with anticipated removal of contaminated source material (coal tar) from beneath the Park site. The ROD noted that these synergies "potentially could save time in Site acquisition and permitting and save significant construction costs."

Since receiving New York City's June 2015 report, EPA has been carefully considering the tank siting question. During public presentations at a Community Board 6 meeting on October 26, 2015 and at a CAG meeting on January 19, 2016, I discussed at some length the reasons for and against the two potential locations for the larger RH-034 CSO retention tank.

EPA is now prepared to make its decisions on the siting of both tanks.

With respect to the smaller 4 million gallon OH-007 tank, EPA is prepared to direct New York City to continue under the existing UAO with the tank design for the location designated as OH-4.

With respect to the 8 million gallon RH-034 tank, EPA is prepared to accept New York City's preferred location and to direct New York City to proceed with the tank design for the site designated by the City as RH-3, the Head-of-Canal location, under a newly negotiated administrative settlement agreement and order (Agreement). Under the Agreement, EPA will be requiring New York City to also complete, contemporaneously, a tank design the Park site, designated by the City as RH-4, as a contingency.¹

While EPA believes that construction of the 8 million gallon RH-034 CSO tank at the Park site could be done more quickly and at less expense than at the Head-of-Canal location, EPA understands the City's strong policy reasons for avoiding the longer disruption and potential permanent loss of space at the Thomas Greene Park were the tank and the associated head house to be built there. EPA also recognizes that building the tank at the Head-of-Canal location would result in creation of additional open space for the community. EPA's acceptance of the City's strong preference for the Head-of-Canal location resulted in the City's willingness to consent to the above-referenced Agreement, which includes a number of provisions that EPA considers to be of considerable importance and value in furthering the Agency's objectives and achieving the environmental and public health benefits that formed the basis for EPA's Gowanus Canal ROD.

The Agreement is the document in which our tank siting decisions will be memorialized, and also provides for New York City's preparation of the Head-of-Canal site for the RH-034 tank, including the removal of certain contaminated material and soil, as well as groundwater management. A copy of the proposed Agreement is enclosed, and both the Agreement and the extensive appendices thereto are available at: <https://www3.epa.gov/region02/superfund/npl/gowanus/additionaldocs.html>

We are providing a 30-day period during which the public can comment on the proposed response actions being secured pursuant to the Agreement; and we will hold a public meeting on April 25, 2016 during which we will describe the proposed Agreement and explain further our reasons for the siting and related decisions incorporated in that document. The comment period will close on May 16, 2016. Thereafter EPA will consider all comments we receive, and will then make a final decision.

At the October 26, 2015 and January 19, 2016 community meetings that I attended, I noted that if EPA were to accept the Head-of-Canal location for the 8 million gallon RH-034 tank, that decision would be contingent on the City meeting a number of conditions, several of which I mentioned at those meetings. These conditions have been memorialized in the Agreement.

¹ Regardless of where the 8 million gallon RH-034 CSO retention tank is built, EPA will be requiring removal of soil contaminated by coal tar from beneath the Park site. EPA will also be requiring that a temporary pool and associated amenities be provided during any time period when public use of the Park site is not possible because of this removal work.

The EPA is holding a public meeting on April 25, 2016 to discuss the terms of the Agreement. I know that there is a regularly scheduled CAG meeting on April 26, the day after our public meeting. Should the CAG consider it helpful, I will be happy to attend the CAG meeting as well, to continue to respond to questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter E. Mugdan", with a long horizontal flourish extending to the right.

Walter E. Mugdan, Director
Emergency & Remedial Response Division

Enclosure